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**Background Paper**

**INTERNATIONAL CONFLICTS:  
PARLIAMENT, THE NATIONAL DEFENCE ACT,  
AND THE DECISION TO PARTICIPATE**

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**August 1992**



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**INTERNATIONAL CONFLICTS:  
PARLIAMENT, THE *NATIONAL DEFENCE ACT*,  
AND THE DECISION TO PARTICIPATE**

**INTRODUCTION**

Following Iraq's invasion of Kuwait on 2 August 1990, the Canadian government decided to deploy three ships to the Persian Gulf to help enforce sanctions against Iraq called for by the United Nations Security Council. There was controversy in Canada not only over the decision to become involved in international actions against Iraq, later to escalate to military measures, but also with regard to Parliament's role in authorizing the deployment of Canadian Forces units and placing them on active service. Some Canadians thought that a declaration of war was necessary before such action could be taken, while others argued that Parliament should have been involved in these decisions much sooner.

To clarify the question, this paper examines Parliament's role in the process whereby Canada declared war in the two World Wars and the extent to which the United Nations Charter has modified this process. The *National Defence Act* provisions for placing Canadian military personnel on active service are discussed, as are the measures taken by Parliament during the Persian Gulf crisis. We can thus determine to what extent the established process was followed.

**DECLARATIONS OF WAR**

**A. First World War**

The parliamentary processes through which Canada became involved in the First and Second World Wars were basically the same, although the political context had changed

significantly between these events. Canada was a colony of Great Britain in 1914, and, like other colonies of Great Britain, entered the war on 4 August 1914, the same day as the mother country.

On that day, the Canadian government issued an order in council proclaiming that Canada was at war and, in the following days, passed other orders in council dealing with war-related measures. When war broke out, Parliament was not sitting and these orders in council were tabled in the House of Commons when Parliament reconvened on 18 August 1914 (instead of 28 August as originally planned). On 18 August, the Governor General delivered a speech in the Senate Chamber indicating the measures the government would take to deal with the war. An Address in reply to the Speech from the Throne was debated in both Houses of Parliament and a motion approving that address was adopted by the House of Commons on 19 August.<sup>(1)</sup>

## **B. Second World War**

### **1. Germany**

The political context was different at the beginning of the Second World War because in 1939 Canada was an independent country. There were still strong economic, cultural and diplomatic ties with the mother country and there was little doubt that Canada, like other countries of the British Commonwealth, would ally itself with Great Britain; nevertheless, Canada did not declare war on the same day as Great Britain, as it had done in 1914. Canadian political leaders wanted to wait for Parliament's approval partly in order to demonstrate Canada's independence.

Thus, although Great Britain declared war on Germany on 3 September 1939 (after that country's invasion of Poland on 1 September), it was not until 10 September that Canada declared war on Germany. Canada was officially a neutral country for the first 10 days of the Second World War, although there was little doubt that the country was preparing for war.

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(1) Canada, House of Commons, *Debates*, 19 August 1914, p. 19.



When the war started in Europe, Parliament was not in session and was not scheduled to return before 2 October; however, it resumed sitting on 7 September 1939. As in 1914, the Governor General read a Speech from the Throne and an Address in reply to the Speech from the Throne was debated. During this debate, which began on 8 September, Prime Minister Mackenzie King explained how Parliament's approval of the Address in reply to the Speech from the Throne would pave the way for a formal declaration of war:

The adoption of the address in reply to the speech from the throne will be considered as approving not only the speech from the throne but approving the government's policy which I set out yesterday of immediate participation in the war.

If the address in reply to the speech from the throne is approved, the government will therefore immediately take steps for the issue of a formal proclamation declaring the existence of a state of war between Canada and the German Reich.<sup>(2)</sup>

The motion to adopt the Address was passed in the Senate while the House of Commons continued debate on the motion and adopted it late in the evening of 9 September. The next day the government issued an order in council indicating that Canada was at war with Germany. Since 10 September was a Sunday, the order in council was tabled in the House only on 11 September, when the Prime Minister told the House that the Cabinet had issued the order in council shortly after the motion had been adopted and that the government had been informed at 11:15 a.m. on 10 September that the King had approved the petition asking for his approval of the proclamation.<sup>(3)</sup>

No specific time frame for declarations of war or similar statements was set by the course followed in 1939, but the practice of having both Houses of Parliament adopt an Address in reply to the Speech from the Throne was confirmed and a new precedent was set for the sequence of events leading up to the issuance of the order in council. In 1914, the order in council had been proclaimed the day the war started and parliamentary debate followed;

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(2) Canada, House of Commons, *Debates*, 9 September 1939, p. 51.

(3) Canada, House of Commons, *Debates*, 11 September 1939, p. 88-89.



however, in 1939 parliamentary debate preceded the order in council declaring war. This was the procedure followed when war was declared on Italy in 1940.

## 2. Italy

On 10 June 1940, while German troops continued their advance into France, Italy declared war on Great Britain and its allies. On the same day, Prime Minister Mackenzie King moved the following motion in the House of Commons:

Whereas Italy has declared her intention to enter the war on the side of Germany and against the allied powers; and

Whereas a state of war now exists between the United Kingdom and France on the one hand and Italy, on the other; and

Whereas at the outbreak of war the parliament of Canada decided to stand at the side of the United Kingdom and France in their determined effort to resist aggression and to preserve freedom;

It is expedient that the houses of parliament do approve the entry of Canada into a state of war with Italy, and that this house does approve the same.

After moving the motion, the Prime Minister explained the procedure which would be followed:

May I say that when this resolution is passed, its adoption by both Houses will be followed by a submission to His Majesty from his Privy Council for Canada, with a view to the authorization by him of a proclamation declaring the existence of a state of war between Canada and Italy.<sup>(4)</sup>

The motion was debated and adopted on the same day by both Houses of Parliament and the Cabinet quickly issued an order in council proclaiming the existence of a state of war between Canada and Italy as of that day. The following day, the Prime Minister read in the House of Commons the text of the proclamation as printed in the *Canada Gazette*. Thus, as in the case of the declaration of war on Germany, the government proclaimed that

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(4) Canada, House of Commons, *Debates*, 10 June 1940, p. 653.



Canada was at war with another country only after Parliament had debated and adopted a motion to this effect.

### 3. Japan, Hungary, Romania and Finland

Subsequent declarations of war by Canada during the Second World War took place without any parliamentary debate. When the Japanese attacked Pearl Harbour on 7 December 1941, Parliament had been adjourned since 14 November and was not scheduled to resume sitting until 21 January 1942. There was a special meeting of the two Houses on 30 December, but this was for an address to the Canadian Parliament by the British Prime Minister, Winston Churchill.

When Parliament resumed sitting as planned on 21 January 1942, Prime Minister Mackenzie King tabled in the House of Commons a proclamation dated 8 December 1941 indicating that a state of war existed between Canada and Japan as of 7 December.<sup>(5)</sup>

On 21 January 1942, Prime Minister Mackenzie King also tabled proclamations dated 7 December 1941 indicating that a state of war existed as of that date between Canada and three European countries, Romania, Hungary, and Finland, three countries that had recently allied themselves with Nazi Germany. The fact that Parliament had not been in session when war was declared on Japan and these three other countries was apparently of some concern to Prime Minister Mackenzie King. However, according to his diary, he comforted himself with the knowledge that the declarations of war against Japan, Hungary, Romania and Finland were "all part of the same war," that is, the war that had begun for Canada on 10 September 1939, when Parliament had adopted the Address in reply to the Speech from the Throne.<sup>(6)</sup> Thus, the Prime Minister decided he did not need to reconvene Parliament earlier than scheduled to approve these later declarations of war.

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(5) Canada, House of Commons, *Debates*, 21 January 1942, p. 4461-4462.

(6) C.P. Stacey, *Canada and the Age of Conflict*, Volume 2: 1921-1948, University of Toronto Press, Toronto, 1981, p. 320.



#### 4. Consensus on Procedure

The Debates of the House of Commons do not indicate that the opposition objected to the fact that Parliament had not been reconvened to adopt motions concerning the declarations of war on Japan, Hungary, Romania and Finland. Indeed, at this point in the war, Canadian public opinion accepted that Canada had no choice but to maintain its war effort against the continued aggression of Germany, Japan and Italy and their allies. If Parliament had been reconvened soon after 7 December 1941, there is little doubt that the declarations of war on Japan and Germany's allies would have been quickly approved.

Indeed, there was generally little criticism of the process the government followed to indicate formally that Canada was at war. In 1939, the CCF Party opposed sending Canadian soldiers abroad, but it decided, after much discussion, to give qualified support to the war effort. J.S. Woodsworth, the party's leader, did not accept his party's position and indicated his continued strong opposition to war in a speech in the House of Commons. Following Germany's invasion of Belgium, Holland and France in 1940, however, most doubts about Canada's participation in the war quickly disappeared. For example, during debate on the motion concerning the declaration of war on Italy on 10 June 1940, M.J. Coldwell, the CCF Party's spokesman stated:

This war is none of our seeking; it is thrust upon us. And we have no option, it seems to me, but to accept the challenge and to go forward to ultimate victory.<sup>(7)</sup>

Perhaps the strongest criticism of the process adopted to formalize Canada's declaration of war came from Professor Frank Scott, who sent a letter to the Prime Minister in 1939, which said:

May I point out that your Cabinet, a "group of individuals," took so many steps to place Canada in a state of active belligerency

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(7) Canada, House of Commons, *Debates*, 10 June 1940, p. 653.



before Parliament [met]...that you very greatly limited Canadian freedom of action to decide what course to follow...<sup>(8)</sup>

Professor Scott was also upset by the fact that the government had announced the decision to send an expeditionary force overseas on 13 September, after Parliament had been prorogued. In the early days of the war, the sending of an expeditionary force was a controversial issue mainly because of concerns that this would lead to a conscription crisis similar to that in the First World War.

In fact, Professor Scott actually underestimated the importance the government attached to Parliament's role in the political process. At a meeting of the Cabinet Defence Committee on 5 September, the government made it clear to the military that major decisions like the one to send an expeditionary force overseas would not be considered until Parliament reconvened on 7 September to approve the declaration of war.<sup>(9)</sup>

While Professor Scott thought that Parliament had been ignored, other Canadians would have been angered by any government delay in rallying to Britain's side as soon as war broke out. In other words, there were opposing views on the importance of Parliament's role in the process. The government, by insisting on reconvening Parliament before actually declaring war, had asserted Parliament's importance in the political process, and this was generally accepted by Canadians.

Nevertheless, some measures remain the prerogative of the Governor in Council, that is, the Cabinet. Whether or not every government decision should be taken only after parliamentary debate is open to argument, but, according to the laws of the land (including the *National Defence Act*, which will be dealt with later in this paper), the Cabinet can certainly decide on some measures, especially those of a military nature where speed and security are factors, before consulting Parliament.

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(8) J.L. Granatstein, *Canada's War: The Politics of the Mackenzie King Government, 1939-1945*, Oxford University Press, Toronto, 1975, p. 26.

(9) C.P. Stacey, *Arms, Men and Governments: The War Policies of Canada, 1939-1945*, Queen's Printer, Ottawa, 1970, p. 10.



## SITUATION SINCE THE SECOND WORLD WAR

### A. Canadian Participation in the Korean Conflict

While the declarations of war during the First and Second World Wars established a number of parliamentary precedents, since 1945 there has been a completely different set of circumstances; Canada has participated in a number of international conflicts, but has never declared war. The process through which this came about can be understood by looking at how Canada became involved in the Korean conflict between 1950 and 1953.

Following North Korea's invasion of South Korea on 25 June 1950, the Security Council of the United Nations passed a resolution requesting member countries of the U.N. to assist South Korea in dealing with North Korean aggression and to reestablish peace in the region. The Soviet representative on the Security Council, who had been boycotting meetings for some time, was not present. On 26 June, Secretary of State for External Affairs L.B. Pearson made a statement in the House of Commons concerning the Korean situation and read into the record the text of the Security Council resolution. On 30 June, Prime Minister St. Laurent, commenting on the Korean situation and the Security Council resolution, said:

Any participation by Canada in carrying out the foregoing resolution - and I wish to emphasize this strongly - would not be participation in war against any state. It would be our part in collective police action under the control of the United Nations for the purpose of restoring peace to an area where an aggression has occurred as determined under the charter of the United Nations by the security council, which decision has been accepted by us.

The Prime Minister also said:

I would add, however, that if we are informed that a Canadian contribution to aid United Nations operations, under a United Nations commander, would be important to achieve the ends of peace, which is of course our only purpose, then the government wishes parliament to know that it would immediately consider making such a contribution.<sup>(10)</sup>

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(10) Canada, House of Commons, *Debates*, 30 June 1950, p. 4459.



In short, the Prime Minister made it clear that Canada was ready to send military personnel and equipment to help South Korea deal with the aggression if the United Nations considered such action necessary. Canada would not have to declare war on North Korea, however, because our military forces would be participating in a collective police action, in keeping with the U.N. Charter. On 30 June, however, when Parliament was about to recess for the summer, the Prime Minister suggested that it might be recalled to consider more measures if there were new developments:

If the situation in Korea or elsewhere, after prorogation, should deteriorate and action by Canada beyond that which I indicated should be considered, Parliament will immediately be summoned to give the new situation consideration.<sup>(11)</sup>

Subsequently, the government decided in early July to deploy three ships to Korea and a few days later, committed a squadron of transport aircraft. When Parliament returned on 29 August 1950, it was for a special session that dealt with a national railroad strike, as well as with the situation in South Korea; however, the Speech from the Throne made it clear that the Korean situation was the main purpose. U.S. and allied troops were being overrun, and because of fears in Western countries that this was a precursor of other acts of aggression by the Soviet Bloc, the Canadian government wanted a rapid expansion of Canada's military forces as a whole, as well as an increase in the number of Canadian personnel involved in the Korean police action. Thus, the government introduced new legislation, including the *Canadian Forces Act* to amend the *National Defence Act* and the *Defence Appropriation Act* to increase the defence budget.

The special session of Parliament did not, however, debate or pass a motion specifically dealing with the government's decision concerning Canadian participation in U.N. police action in Korea. Indeed, during debate on the *Canadian Forces Act*, an opposition Member asked the Prime Minister if there would be a resolution authorizing the sending of troops to Korea. Mr. St. Laurent replied:

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(11) *Ibid.*



No, sir; that would be something which has never been done. The government announces to parliament what its policy is, and asks parliament for the ways and means to carry it out. It is for that reason that we have our appropriation bill. If parliament does not authorize the ways and means to carry out the policy, it cannot be carried out.<sup>(12)</sup>

The *Defence Appropriation Act* was passed by Parliament, thereby authorizing the ways and means for the government to carry out its policy on the Korean conflict.

## **B. Implications of the United Nations Charter**

### **1. The Korean Conflict and the U.N. Charter**

The fact that Canada participated in the Korean conflict without declaring war on any country demonstrates the new element that was added to international conflicts after the Second World War. A new basis for international action against a country that committed an aggressive act against another was established with the signing of the United Nations Charter in 1945.

While nothing prevents one country from declaring war on another, the general notion of collective security provided for in the U.N. Charter means that member countries of the United Nations can take collective action to stop aggression by one country and to restore peace without having to go through the formality of declaring war. As Prime Minister St. Laurent said in his statement of 30 June 1950, Canada can be involved in a collective police action against a state without necessarily declaring war on that state. Indeed, the United Nations is above all preoccupied with restoring peace and it can influence invading forces to withdraw from neighbouring territory first by diplomatic means, and then, if necessary, by military means.

The U.N. Charter was written during the last days of the Second World War when an idealistic view of the post-war world coloured the blueprint for a system of international peace and security. The collective use of force to deal with threats to peace and acts of aggression was one of the pillars of the new system. Another pillar was the renunciation of the use of force by governments and its replacement with the peaceful resolution of disputes.

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(12) Canada, House of Commons, *Debates*, 8 September 1950, p. 495.



According to the Charter, the Security Council "would be the supervisor and executor of the process" while the International Court of Justice would be the arbiter of the legal aspects of any dispute.<sup>(13)</sup>

The post-war international system envisaged by the U.N. Charter never really materialized, however. The Cold War, in which the Western bloc led by the United States and the Soviet bloc faced each other menacingly, created a distorted international situation that almost paralyzed the United Nations. No agreement was reached on the implementation of Article 43 of the Charter, which would have put the military forces of various countries under the authority of the United Nations for collective security operations. The members of the U.N. also found it impossible to use as originally planned the Military Staff Committee, which, under Article 47, was authorized to advise and assist the Security Council on military matters.

Thus, some elements of the collective security machinery laid out in the Charter were not in place when the Korean conflict started in 1950. Nevertheless, such action "by air, sea or land forces as may be necessary to maintain or restore international peace and security," was still possible under Article 42.

It has been argued that the U.N. military action in the Korean conflict, the only such action taken by the U.N. against an aggressor until the recent Persian Gulf crisis, was made possible only because the Soviet Union at the time of the invasion was boycotting the meetings of the Security Council; otherwise, the Soviet Union would almost certainly have vetoed the decision of the other Security Council members. Thus, the Korean conflict has been described as "not a UN war, but a war of western states condoned by the UN."<sup>(14)</sup> Some might argue that by condoning such a war, the U.N. had not acted within the letter of the Charter.

However, since the international situation in 1950 was not the one envisaged by the Charter, and since a number of its provisions were, as a result, not in full effect, it is difficult to see how the U.N. could have strictly adhered to the provisions of the Charter on collective security matters. U.N. credibility, not to mention respect for international law, would have been seriously undermined had North Korea been allowed to pursue its invasion of

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(13) Brian Urquhart, "Beyond the 'Sheriff's Posse'," *Survival*, Vol. 32, No. 3, May/June 1990, p. 196.

(14) Hans Arnold, "The Gulf Crisis and the United Nations," *Aussenpolitik*, Vol. 42, No. 1, 1991, p. 69.

neighbouring territory. The U.N. therefore decided to act on the basis of the general concept of collective security contained in the Charter, even though the measures taken were not exactly those prescribed by the Charter.

The action in Korea is not the only occasion on which the U.N. has not acted strictly according to the letter of the Charter. There are many examples of improvised U.N. actions to deal with international situations unforeseen in 1945. For example, peacekeeping operations are not mentioned specifically in the Charter, but they are now universally accepted as worthwhile and necessary. The expansion of the role of the Secretary-General, something which proved desirable when the Cold War was paralyzing many elements of the U.N., is another development not in keeping with the letter of the Charter.<sup>(15)</sup>

## 2. Persian Gulf Crisis

When Iraq invaded Kuwait on 2 August 1990, the U.N. was again presented with a situation not exactly as envisaged in 1945. As in 1950, a majority of U.N. members reached a consensus on the need to take action. The Security Council passed resolutions imposing economic sanctions on Iraq and calling for action to force Iraqi forces out of Kuwait. While the international community's interpretation of the Charter and the actions taken may be open to debate, the fact remains that the Security Council passed resolutions condoning military intervention in the Persian Gulf by a coalition of U.N. member countries.

Once again, the measures taken did not correspond exactly to the letter of the provisions in the Charter. The international context in 1990-1991, though perhaps closer to the one envisaged in 1945 than any since that time because the Cold War was coming to an end, was still different enough to force the U.N. to act basically as it had done at the time of the Korean conflict. The Soviet Union did not veto any resolutions of the Security Council and all five permanent members were involved in the decisions; thus, the validity of the U.N. actions was enhanced. Whether or not the Security Council should have such sweeping powers can be questioned; however, there was consensus within the international community (tenuous as it may sometimes have appeared) on the need to respond to Iraq's aggression against Kuwait.

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(15) Urquhart (1990), p. 197.



Canada has always strongly supported the United Nations and championed collective action to ensure international peace. Moreover, Canada has generally accepted the position of its allies, such as the United States and the United Kingdom, on major collective security issues. Thus, Canada's August 1990 decision to participate in the international response to Iraq's invasion of Kuwait was in keeping with the basic tenets of Canadian foreign policy since 1945. Indeed, after years of championing the U.N. and collective international action, it would have been inconsistent for Canada to oppose the U.N. decision.

Since the measures taken against Iraq, like those against North Korea in 1950, did not require Canada to declare war, it was not necessary for Parliament to debate a declaration of war. It was also within the powers of the government, without recalling Parliament, to authorize other actions taken by Canada shortly after Iraq's invasion of Kuwait.

For example, when on 6 August 1990 the United Nations Security Council passed Resolution 661, which made it mandatory for U.N. members to impose strict economic sanctions on Iraq, the Canadian government did so by invoking the *United Nations Act*, which stipulates only that any orders and regulations made under it will be tabled as soon as Parliament returns.

The *United Nations Act* can be invoked only if the Security Council calls for mandatory sanctions; the government could have imposed sanctions that were merely recommended, but at that time the process for this was more complex. New legislation, the *Special Economic Measures Act*, passed by the House of Commons on 6 May 1992, now makes it easier for sanctions to be imposed in cases where the *United Nations Act* cannot be invoked. Both Acts can be invoked without recalling Parliament.

At the time of the Gulf crisis, it was not necessary to declare an international emergency or a war emergency (not to be confused with a declaration of war). The *Emergencies Act* (successor to the *War Measures Act*) specifies that Parliament will be recalled within seven days after such declarations. A declaration of an international or war emergency might have been issued if the Persian Gulf crisis had threatened to escalate to a world conflict between, for example, the U.S. and the Soviet bloc. The government could then have invoked the *Emergencies Act* to give itself special powers to carry out Canada's war effort, to control resources, and to maintain law and order within Canada. Canada's security was not threatened by the Persian Gulf conflict, however, and the agreement of the Soviet Union and China with

the actions of the Security Council meant there was little danger of a world war. Indeed, in retrospect, invoking the *Emergencies Act* at that time would have been an extreme measure.

The introduction of comprehensive sanctions required the use of military forces, mainly ships to patrol sea lanes near Iraq, to ensure that they would not be circumvented. On 10 August 1990, the government announced that Canada, like other U.N. countries, would supply ships for this task. On 25 August, the Security Council passed Resolution 665, which called on the multinational force to take all necessary measures to ensure the effectiveness of the sanctions.

The government's decision to send ships to assist in the policing of sanctions in the Gulf sparked a controversy in Canada. It was claimed that Parliament should have been recalled before the planned date of 24 September, in order to consider the situation. Section 32 of the *National Defence Act* states that Parliament, if it is not sitting, must reconvene within 10 days after the Canadian Forces have been placed on active service. Thus, there was much discussion in August and September 1990 as to when military units deployed to the Persian Gulf should be placed on active service and when Parliament should be reconvened. To clarify the issues raised at this time, it is necessary to examine the history of the *National Defence Act*.

## NATIONAL DEFENCE ACT

### A. Placing Canadian Forces Personnel on Active Service

The *National Defence Act* provides the legislative authority for measures taken by the Minister of National Defence and the Department of National Defence and outlines the regulations governing the members of the Canadian Forces. Among other things, the Act makes it possible for the government to place Canadian Forces personnel on active service. Section 31 of the *National Defence Act* states:

31. (1) The Governor in Council may place the Canadian Forces or any component, unit or other element thereof or any officer or non-commissioned member thereof on active service anywhere in or beyond Canada at any time when it appears advisable to do so
- (a) by reason of an emergency, for the defence of Canada; or



(b) in consequence of any action undertaken by Canada under the United Nations Charter, the North Atlantic Treaty or any similar instrument for collective defence that may be entered into by Canada.

Section 32 of the Act stipulates that if Parliament is not sitting at the time Canadian military personnel are placed on active service, "a proclamation shall be issued for the meeting of Parliament within ten days."

Before the Act was amended in 1950, the Canadian military could be placed on active service only if there was an emergency with regard to Canada's defence. An emergency was defined as a "war, invasion, riot, or insurrection, real or apprehended." Determining whether or not Canada's defence faced an emergency was left up to the Cabinet, who could place the military on active service before Parliament could debate the issue.

In 1939, the Canadian military was placed on active service on 1 September, but the orders in council to this effect were tabled in the House of Commons only on 7 September when Parliament reconvened.<sup>(16)</sup> On 25 August, however, long before it was placed on active service, the Canadian military had already taken precautionary measures in the face of mounting international tensions.<sup>(17)</sup>

## B. 1950 Amendment

In September 1950, the government introduced legislation to amend the *National Defence Act*, not only to deal with the Korean conflict, which had started a few months before, but also to reflect the new situation created by the United Nations Charter, drafted in 1945, and the North Atlantic Treaty, signed in 1948. The *Canadian Forces Act* added s. 31(1)(b) to the *National Defence Act*, amending the Act so that the armed forces could be placed on active service not only when Canada's security was threatened, but also when collective action was

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(16) Canada, House of Commons, *Debates*, 7 September 1939, p. 2-3.

(17) See Lt.-Gen. Maurice A. Pope, *Soldiers and Politicians: The Memoirs of Lt.-Gen. Maurice A. Pope*, University of Toronto Press, Toronto, 1962, p. 137.

taken under the United Nations Charter, the North Atlantic Treaty or other collective defence arrangement.

The *National Defence Act* had also been amended earlier in 1950, among other things, to require Parliament to be recalled within 10 days rather than 15. Nevertheless, debate on the *Canadian Forces Act* centred on Parliament's role with regard to active service, for example, in cases when it reconvened after the military had been placed on active service. One opposition M.P., Stanley Knowles, stated that all "that the law seems to require is that parliament must be here and be sitting within fifteen days, now ten days, after the proclamation placing the forces on active service has been made."<sup>(18)</sup> Later on in the debate, Prime Minister St. Laurent confirmed this: "My understanding of the constitutional position is that there is no specific action required by parliament in the form of an affirmative decision."<sup>(19)</sup>

While it was not completely clear what Parliament would do when it resumed sittings, the government did affirm its commitment to recall Parliament when there was an emergency situation. Referring to Canada's commitments under the North Atlantic Treaty to come to the aid of any NATO ally being attacked by another country, Secretary of State for External Affairs Lester B. Pearson stated:

If such an attack is made I take it that it will be the duty of this government to call parliament at once and tell parliament that an attack had been made on a member of the north Atlantic group and therefore an attack had been made on Canada. Parliament would then decide whether an attack had or had not been made on Canada.<sup>(20)</sup>

The next day, the Minister of National Defence pointed out that Parliament had accepted these commitments when it had ratified Canada's decision to sign the United Nations

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(18) Canada, House of Commons, *Debates*, 8 September 1950, p. 493.

(19) *Ibid.*, p. 496.

(20) Canada, House of Commons, *Debates*, 6 September 1950, p. 351.



Charter and the North Atlantic Treaty, but that this did not affect the obligation to recall Parliament within 10 days of placing the armed forces on active service.<sup>(21)</sup>

Debate also focused on the fact that it was difficult to define exactly what "active service" meant. As noted above, the military can take measures before being placed on active service and can in fact become involved in combat operations. Indeed, when Parliament was debating the *Canadian Forces Act* in early September 1950, though the Canadian military had not been placed on active service, three Canadian ships were already in Korean waters and participating in combat operations. The Minister of National Defence, Brooke Claxton, referring to the ships and transport aircraft already deployed, stated that he had been "advised by the Department of Justice that it was quite possible to send them to Korea without putting them on active service."<sup>(22)</sup>

In fact, placing the military on active service is done for bureaucratic reasons. Some Canadians may have the impression that the Canadian military cannot become involved in combat operations or cannot be deployed until they are on active service, but in fact active service is important for other reasons. During debate on the *Canadian Forces Act*, the Minister of National Defence stated:

The effect of placing the forces on active service is rather technical. It relates to the application of the insurance principle under the *Canadian Pension Act*; the application of the disciplinary code, and provisions for release from the armed forces.<sup>(23)</sup>

The Minister later indicated that the military would not be officially on active service until the date an order in council was passed to this effect, but pension and other benefits would be calculated as of 5 July, when the ships were sent to Korea.<sup>(24)</sup>

The *Canadian Forces Act* was passed by the House of Commons on 8 September 1950 and, soon after Royal Assent had been given the next day, Order in Council P.C.

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(21) Canada, House of Commons, *Debates*, 7 September 1950, p. 441.

(22) Canada, House of Commons, *Debates*, 8 September 1950, p. 499.

(23) Canada, House of Commons, *Debates*, 7 September 1950, p. 439.

(24) Canada, House of Commons, *Debates*, 8 September 1950, p. 501.

1950-4365, concerning Canadian personnel assigned to the Korean operation, was issued. This imposed a limit on the total number of personnel to be involved in the operation, and placed all Canadian military personnel on active service:

In order that officers and men of the Canadian forces, not exceeding 15,000 in number at any one time, may most effectively participate in action undertaken by the United Nations to restore peace in the republic of Korea, the components of the Royal Canadian Navy, Canadian Army and Royal Canadian Air Force that are referred to in the *National Defence Act* as the regular forces are hereby placed on active service.

### C. Active Service since 1950

As a result of Order in Council 1950-4365 and subsequent amendments, Canada's armed forces have in effect been on active service since 1950, mainly because Cold War tensions and developments in military technology made devastating surprise attacks more likely. Memories of the surprise attack on Pearl Harbour in 1941 had a great influence on post-war Western military planning, and for most of the following period Western countries feared a surprise attack by the Soviet Union.

Since there were fears that North Korea's aggression against South Korea was a precursor of other attacks against Western interests by the Soviet Bloc, the Canadian government decided to send Canadian troops and fighter squadrons to bolster NATO defences along the border between West Germany and East Germany. This deployment was covered by Order in Council P.C. 1951-5598 of 18 October 1951, later replaced by P.C. 1961-1276 of 7 September 1961; however, Canadian military personnel were in fact still on active service as a result of P.C. 1950-4365.

During the debate on the *Canadian Forces Act*, Prime Minister St. Laurent had assured an opposition Member that Order in Council P.C. 1950-4365 would place the military on active service only for the Korean situation.<sup>(25)</sup> In fact, however, the threat of Soviet aggression elsewhere in the world and the Cold War in general gave a broader definition to the

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(25) *Ibid.*, p. 497.



term Korean situation. Since Canadian military forces stationed in Europe near the central front after October 1951 might at any time experience a surprise Soviet attack, it became necessary to keep them on active service. Moreover, when the Soviet Union developed nuclear weapons and long-range bombers capable of reaching North America, the possibility that interceptor pilots might have to attack Soviet bombers on a surprise attack in Canadian airspace increased significantly. Cold War tensions and developments in military technology therefore made it expedient to keep military forces in a high state of readiness, and, since they theoretically might have to go into action at any moment, it was considered necessary to keep them on active service.<sup>(26)</sup>

In fact, P.C. 1950-4365 was revoked on 20 November 1973 and was replaced the same day by Order in Council P.C. 1973-3641. In order to meet Canada's obligations under the North Atlantic Treaty, it placed Canadian military personnel of the Regular Force on active service anywhere in and beyond Canada. When reserve forces became more important in Canadian defence planning in the late 1980s, P.C. 1973-3641 was revoked by Order in Council P.C. 1989-582 and was replaced by P.C. 1989-583 issued on 6 April 1989. This placed both Regular Force and reserve force personnel of the Canadian Forces on active service to meet Canada's NATO obligations.

#### **D. Active Service for Peacekeeping and Other Operations**

Although Canadian military personnel were already on active service for NATO duties, it became the practice to issue orders in council whenever a significant number of Canadian military personnel participated in specific missions, such as in U.N. peacekeeping operations. Examples are: P.C. 1956-1712 for the Suez peacekeeping mission in 1956; P.C. 1960-1080 for the Congo operation in 1960; and P.C. 1964-389 for the Cyprus mission in 1964.

This practice continues today. P.C. 1989-584 of 6 April 1989 concerned the force sent to Namibia to participate in the United Nations Transition Assistance Group (UNTAG) operation. It was tabled in the House of Commons on 12 April 1989 and debated the same day,

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(26) The active service status should not be confused with the increased state of readiness of Canadian interceptors in NORAD, which became an issue during the 1962 Cuban missile crisis.

although the government's decision to contribute personnel to the UNTAG mission had been announced on 1 March, a full month before. Another example is P.C. 1990-192, of 1 February 1990, concerning the personnel participating in the United Nations Observer Group in Central America (ONUCA).

Nevertheless, in August and September 1990, when the government announced that Canadian ships and CF-18 aircraft would join other forces in the Persian Gulf to enforce actions decided upon by the U.N. Security Council, there was considerable controversy over when Canadian military personnel should be placed on active service. Following the 10 August 1990 announcement that three Canadian ships would be sent to the Persian Gulf area, there were calls for Parliament to be reconvened at once, rather than on 24 September as scheduled. Overlooked was the fact that in early July 1950, three ships had left Canada for Korean waters, two months before an order in council was issued to place the sailors on active duty.

The ships did not leave Halifax for the Persian Gulf until late August and reached the entrance to the Suez canal in mid-September. Technically, the personnel aboard the ships did not have to be on active service before they were in the area of operation. In any case, while they crossed the Atlantic and trained off Gibraltar, they could have been said to be on active service in fulfilment of NATO duties in accordance with P.C. 1989-583.

Indeed, there was considerable confusion on this issue, even in the Department of National Defence itself, according to some press reports at the time. Nevertheless, Order in Council P.C. 1990-1995 was passed on 15 September 1990 and Parliament reconvened on 24 September, that is, within the 10 days specified in the *National Defence Act*. It has been claimed that when the ships were about to enter the Suez Canal and thus approaching the danger zone, P.C. 1990-1995 was passed for them to go from peacekeeping to active service.<sup>(27)</sup> However, this was simply not the case.

While the *National Defence Act* states that Parliament must reconvene within 10 days after the armed forces have been placed on active service, there is no indication as to exactly when that must be done. Indeed, while some may argue that Canadian military

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(27) Thomas Lynch, "Canada and the Gulf, Operation Friction," *Navy International*, Vol. 95, No. 11, November 1990, p. 394.



personnel should be placed on active service as soon as a decision has been reached to deploy them outside Canada and that Parliament should be involved at once, perhaps too much attention is paid to the active service status which is mainly concerned with benefits for Canadian Forces personnel. As demonstrated in 1950, active service status can always be declared retroactively, so an order in council can be passed at any time. Thus, while Parliament has a role in approving the process of placing military personnel on active service, its most important role is in reviewing the government's decision concerning Canadian participation in international conflicts.

### PARLIAMENTARY MOTIONS CONCERNING CANADIAN PARTICIPATION IN THE PERSIAN GULF CONFLICT

On the same day (24 September 1990), as the Minister of National Defence tabled in the House of Commons Order in Council P.C. 1990-1995,<sup>(28)</sup> the Secretary of State for External Affairs moved a motion calling for the "despatch of members of the Canadian Forces to take part in the multinational military effort in and around the Arabian Peninsula."<sup>(29)</sup> The wording of the motion was subsequently modified during debate in the House of Commons and after discussions between government and opposition representatives. The amended motion supported, among other things, "the sending of members, vessels and aircraft of the Canadian Forces to participate in the multinational military effort in and around the Arabian Peninsula." A new item was added, asking the government "to present a further resolution to this House in the event of the outbreak of hostilities involving Canadian Forces in and around the Arabian Peninsula."<sup>(30)</sup> The revised motion was passed on 23 October 1990.

Basically, the motion approved the measures taken by the government to deal with the Persian Gulf crisis, including the despatch of Canadian Forces personnel. When Iraqi forces

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(28) Canada, House of Commons, *Debates*, 24 September 1990, p. 13218.

(29) *Ibid.*, p. 13232.

(30) Canada, House of Commons, *Debates*, 23 October 1990, p. 14612.

remained in Kuwait, despite demands by the United Nations that they should be withdrawn by 15 January 1991, other motions, passed on 29 November 1990 and 22 January 1991 (tabled on 15 January), reaffirmed Canada's support for the U.N. actions, including the use of military force. The motion passed on 22 January 1991 was in fact the "further resolution in the event of the outbreak of hostilities involving Canadian Forces" called for in the motion passed on 23 October 1990.

## CONCLUSION

Although there was no formal declaration of war, Canada's participation in the Persian Gulf conflict was debated in Parliament and motions were passed approving the measures taken in accordance with United Nations police action. Parliament was also advised that Canadian Forces personnel had been placed on active service. The procedure followed was not exactly the one used in 1950 for the other U.N. police action, but in 1990-1991, Parliament passed specific motions and was thus more directly involved.

The need for motions to reaffirm previous motions in 1990-1991 arose from the complexity of the Persian Gulf issue and the controversy it generated. The fact that a further resolution was called for "in the event of the outbreak of hostilities involving Canadian Forces," even though the military personnel had already been placed on active service, created an important precedent. Parliament passed not only a motion to approve the government measures (such as deploying troops), taken to deal with the conflict, but also a motion to approve the actual participation of Canadian Forces personnel already in the combat zone.

Such a motion was a product of the particular circumstances of the Persian Gulf conflict where, after a territory had been conquered quickly, the aggressor country and the U.N. confronted each other for many months before the latter took military action. A future conflict might, however, be more like the Korean situation, where U.S. and allied forces were engaged with the enemy and were being pushed back almost to the sea while Parliament was meeting. In such a situation, there might not be time for Parliament to pass a motion before the "outbreak of hostilities involving Canadian Forces." In short, Parliament's role in approving Canadian



participation in international conflicts and in reviewing the government decisions to place the military on active service, should perhaps be reexamined not only to protect Parliament's rights, but also to clarify the status of Canadian Forces personnel in situations that might develop at some future date.







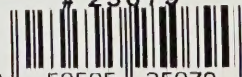






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